

Abdul Ali-Petitioner Vs Ramakant Awasthi

Court: Allahabad High Court

Date of Decision: March 23, 2012

Acts Referred: Constitution of India, 1950 " Article 226, 300(a), 300A
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 " Section 21, 21(i)(a)

Citation: (2012) 2 RCR(Rent) 436 : (2012) 2 RCR(Rent) 436

Hon'ble Judges: Shabihul Hasnain, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Shabihul Hasnain, J.

Petitioner has challenged the judgment and order dated 29th November, 2001 passed by the Prescribed

Authority/First Additional Civil Judge (Senior Division), Lucknow in Prescribed Authority Case No. 52/97 (Rama Kant Awasthi v. Abdul Ali) and

judgment and order dated 16.7.2002 passed by Vth Additional District Judge, Lucknow in Rent Appeal No. 2 of 2002 (Abdul Ali v. Rama Kant

Awasthi). For proper adjudication of the case few details are necessary which are as follows:

According to the petitioner, a shop in house No. 32/22-Ga situated at Balmiki Marg, Lalbagh, Lucknow was let out to the petitioner by late Sri

Chunil Lal Awasthi-father of opposite party No. 1 in the year 1963 on a monthly rent of Rs. 40/-, which was subsequently enhanced to Rs. 45/-

per month. The petitioner is running a tailoring business in the name and style of New Rankin Tailors and his son has also joined him in the

business. Father of opposite party No. 1-late Chunni Lal Awasthi died on 24.12.1989. He was survived by two sons namely; Rama Kant Awasthi

(opposite party No. 1) and Shashi Kant Awasthi besides three daughters namely; Smt. Vidhya Awasthi, Smt. Nirmala Tewari and Smt. Urmila

Mishra.

2. Opposite party No. 1 filed petition u/s 21(i)(a) of U.P. Act No. XIII of 1972 against the petitioner without joining his brothers and sisters on the

ground that opposite party is owner of house No. 32/22-Ga, Balmiki Mohal, Lalbagh, Lucknow. Petitioner filed written statement on 3.4.1980

denying the allegations made by opposite parties in application farther mentioning that opposite party is a co-landlord of the property in question.

After death of the father of the opposite party, the property devolved upon his legal heirs i.e. two sons and three daughters. Apart from this, the

petitioner argues about the comparative hardship and details of the income of the opposite parties was also given in the written statement.

3. Mainly there were two questions to be answered by the lower courts. First, whether the petitioner was the sole owner of the property and had

the right to maintain the suit and secondly, whether in comparison of the petitioner the opposite parties would suffer greater hardship if the property

is not released. Both the lower courts have returned the concurrent findings in favour of the opposite parties and this Court does not see any

reason to make any change in the findings of the Court. Well reasoned order has been passed by the Prescribed Authority. The Prescribed

Authority has given his full attention to the relative requirement of both the families and has come to a categorical finding that the case of the

opposite parties was on a better footing and the hardship of the land lord was found to be greater than the tenant. Apart from this, the Prescribed

Authority has also given a categorical finding that the petitioner has never made any attempt to find any alternative accommodation. The appellate

court upheld the judgment of the Prescribed Authority and there are concurrent findings against the petitioner. Even before this Court petitioner has

stated that he has never made any attempt for alternative accommodation.

4. Sri Madhur Kant, counsel for the opposite party has submitted that a suit was filed by his brother and sisters against him challenging the

"Registered Will" in his favour. The said suit was dismissed. He has further argued that a tenant does not have any right to challenge a document by

which the landlord gets his right viz-a-viz his other family members. A "Will" can be challenged only by the family members who would have

benefited under law of succession had there been no "Will". He says that after dismissal of the suit by his other family members the petitioner had

become absolute and sole owner of the property and he had a right to maintain application u/s 21 of the U.P. Act No. 13 of 1972.

5. Petitioner had argued that the opposite parties did not disclose in the original application before the Prescribed Authority as to how he had

become the sole owner of the property. Sri Madhur Kant in response has argued that it was not necessary for him to have disclosed the details of

his ownership rights because they were not in dispute. It was only when this objection was taken by the petitioner in the written statement that it

became necessary for the plaintiff/opposite party to disclose about the "Registered Will" deed. The Court is satisfied with the explanation and no

comments are required.

6. Act No. 13 of 1972 is a piece of benevolent legislation which was required under the compelling circumstances prevailing in the country.

Originally it was a temporary act. It was for the benefit of those persons who were without roof on their head. It was never the intention of the

legislation that anybody who has been provided shelter by allotment of some one else's house will be allowed to grab the property in the garb of a

protective piece of legislation. The preamble declares this country to be "Socialist Democratic Republic". This Preamble does not envisage equal

distribution of all the wealth of the country to every person of the society. A person having less or no property has not been given any right to

snatch the property of a person, who has larger or a bigger property. Right to property is a constitutional right under Article-300(a) of the

Constitution of India. Even the "State" has not been allowed to take away the property of any citizen without paying adequate compensation for it.

No doubt the State can take the property under the power of "Eminent Domain" but compensation has to be paid. Grabbing of property by any

individual of another individual is not promoted by any legislation. In cases like the present one, where the people have been living for more than

half a century and where they have not made any attempt to build their own house/shop while they had sufficient income from the property to invest

in other fields like education and marriage of children a question which naturally crops up is as to what is the intention of such a person towards the

property which he has occupied for more than fifty years on a paltry sum of Rs. 40 to 50 per month ? The answer becomes so obvious that if a

person occupying the property in tenancy for last more than sixty years has not even thought of building his own house, then it can safely be

assumed that he has no bonafide intention of vacating the premises ever in future. At this juncture, the question which arises for consideration

before a writ Court will be "whether such a person deserves to maintain a writ petition under Article 226 of the Constitution of India." The obvious

answer will be "No". Entertainment of a such writ will be an abuse of process of law. A law which was benevolent and was given to a tenant as a

protective umbrella can not be allowed to be converted into a spear. The concept of a socialist democratic republic will be knocked down by such

move while right to property will silently stand alone watching helplessly the fate of Article 300A. The object of a writ court is to provide justice to

the petitioner where there is no remedy available. In the present case, the statutory remedies have been exhausted. Writ Court has been given

enormous powers with corresponding responsibilities. A person who has no intention of leaving the property and looking for alternate

accommodation for fifty years, can not deserve any sympathy from a writ Court. He should be barred at the threshold. The writ should not be

entertained at all. On this count also the Court feels that the writ petition should fail. In view of the discussions and in view of the concurrent

findings of fact against the petitioner, the writ petition is dismissed.